

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.2713 OF 1998

DATED: 14-3-2007

Between:

M/s. Kisan Foods, rep. by its Proprietor Mr. Raj Kumar, r/o.
Hyderabad.

... Petitioner.

And:

A.P.S.E. Board, rep. by its Member Secretary, Vidyut
Soudha, Hyderabad and 2 others.

.. Respondents.

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WRIT PETITION NO.2713 OF 1998

ORDER:

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This writ petition is filed seeking a Writ of Certiorari calling for the records relating to the proceedings of the 2nd respondent dated 10-11-1997 and quash the same being arbitrary and illegal.

The petitioner unit-a manufacturer of biscuits and other related products entered into an agreement with A.P. State Electricity Board (for short, 'the Board') for supply of electricity for a contracted load of 100 VA of HT supply under an agreement dated 4-6-1980. However, the Industry was closed down in the year 1985 due to financial constraints. Consequently, the plant and machinery was sold out to the third parties. The purchasers had also taken over the petitioner's Industry by obtaining lease of the premises of the petitioner unit and started running the unit in the name and style of M/s. Siddartha Foods. The petitioner claims that by letter dated 12-6-1985 while intimating the said fact to the 2nd respondent, it was made clear that the petitioner would not be liable for payment of any charges in future to the Board. It had also conveyed its no objection for the transfer of service connection in the name of M/s. Siddartha Foods and requested to transfer service connection in the name of M/s. Siddartha Foods.

While so, the petitioner came to know that power supply was disconnected to M/s. Siddartha Foods in the month of

October, 1992 alleging non-payment of C.C. charges by it. The petitioner got issued a legal notice dated 24-5-1993 to the respondents reiterating that since the unit was already sold in the year 1985, M/s. Siddartha Foods alone is liable to pay the consumption charges and other statutory levies, if any. Since there was no response, the petitioner again approached the respondents in the year 1993 to settle their account without fastening the liability of disputed amounts on them. In spite of the same, the respondents have not settled the accounts but a letter dated 16-8-1997 was served on the petitioner demanding a sum of Rs.7,20,483-93ps towards alleged arrears. Since the said communication did not contain any details, the petitioner made a representation to the 3rd respondent and in response, the petitioner was furnished the details by letter dated 10-11-1997. From the said letter, it was found that the respondents had levied penalty of Rs.1,08,132-74ps apart from the C.C. Charges/minimum charges payable by M/s. Siddartha Foods for the period from 8/92 to 8/96 for a sum of Rs.6,48,763/-. Aggrieved by the same, this writ petition is filed.

The learned Counsel for the petitioner contended that the liability of the petitioner to pay any charges in respect of the unit in question had ceased in the year 1985 itself when the petitioner had intimated the respondents about the transfer of unit in favour of M/s. Siddartha Foods and therefore, it is not open to the respondents to make any demand against the petitioner on any ground whatsoever after the petitioner's letter dated 12-6-1985 which was acknowledged by the 2nd respondent.

It is also contended by the learned Counsel for the petitioner that since, admittedly the HT supply to the unit was disconnected on 15-10-1992 on account of the alleged default committed by M/s.

Siddhartha Foods, the respondents are bound to terminate the agreement within 3 months thereafter in terms of para 26.8 of the Terms and Conditions of Supply. Having failed to terminate the agreement in accordance with the Terms and Conditions of Supply, the respondents are estopped from making the petitioner liable for payment of the minimum charges for about 4 years under the impugned proceedings.

On behalf of the respondents, the Superintending Engineer, Operation, R.R. District, South Circle, filed a counter-affidavit stating that the name of the petitioner has never been changed till the date of termination of HT agreement and that the consumer was making payments against the bills in the name of the petitioner alone. The plea of the petitioner that the respondents were informed about the sale of the petitioner's factory has been denied and it is stated that there is absolutely no record in the office of the respondents showing the sale said to have been made in favour of M/s. Siddhartha Foods. Though the fact that the electricity supply was disconnected on 15-10-1992 for non-payment of CC charges for the month of 8/92 and subsequently, the HT agreement was also terminated w.e.f. 10-8-1996 has not been disputed, it is contended that the petitioner is liable to pay the minimum charges.

I have heard the learned Counsel for both the parties.

Para 26.10 of the terms and conditions of supply of electrical energy by A.P. State Electricity Board runs as under:

"26.10: Termination of agreement for LT and HT Consumers where supply of electricity remains disconnected.

Where any consumer, whose supply is disconnected for non-payment of any amount due to the Board on any account, fails to pay such dues and regularise his account within three months from the date of disconnection, the Board may if it thinks fit, after completion of 3 months period, issue one month notice for termination of the agreement. If the

consumer still fails to regularise the account, the Board shall terminate the agreement with effect from the date of expiry of the said one month notice. Such termination shall be without prejudice to the rights and obligations incurred or accrued prior to such termination.”

A perusal of the above clause shows that whenever the supply is disconnected for non-payment of the amount due to the Board and the consumer also fails to pay such dues within 3 months from the date of disconnection, the Board has to serve one month notice after completion of 3 months period for termination of agreement and if the consumer still fails to regularise the amount, the Board shall terminate the agreement with effect from the date of expiry of one month notice.

However, the learned counsel for the respondents contended that as per clause 11 of HT agreement read with paras 33.1 and 33.2 of the Terms and Conditions of Supply, the petitioner is liable to pay the minimum charges upto the date of termination of the agreement.

It is true that under clause-11 of the agreement the petitioner/consumer has undertaken to pay the minimum charges every month as prescribed in the tariff even if no electricity is consumed for any reason whatsoever on account of disconnection of supply by the Board because of non-payment of electricity charges, pilferage or other malpractice or for any other valid reason. Similar condition has been incorporated under the Terms and Conditions of Supply under paras 33.1 and 33.2 in which the consumer is made liable for payment of minimum charges even where no electricity is actually consumed for any reason whatsoever.

However, the question that arises for consideration is whether the respondents are justified in keeping the contract alive

for a long time even after disconnection of the power supply and demanding minimum consumption charges from the consumer/petitioner?.

A perusal of para 26-10 of the Terms and Conditions of the Supply of Electrical energy shows that after disconnection of supply for non-payment of the amount due, the Board may give one month notice for termination of the agreement and if the consumer still fails to regularise the account, the Board shall terminate the agreement with effect from the date of expiry of the said one month notice.

In the case on hand, as can be seen from the material on record, the respondents were very well aware of the default committed by consumer and admittedly, the power supply was disconnected on 15-10-1992. However, no steps were initiated for termination of the agreement in terms of para 26.10 for four years after the disconnection of the supply and ultimately the agreement was terminated only on 10-8-96. The only explanation offered in the counter affidavit was pendency of W.P.Nos.3997 of 1986 and 648 of 1988 filed by M/s. Siddhartha Foods. Even the said plea does not appear to be acceptable since both the said writ petitions were disposed of much prior to disconnection of supply on 31-01-1989 and 21-01-1988, respectively. Hence I find force in the submission of the learned counsel for the petitioner that there was absolutely no justifiable reason for the inaction on the part of the respondents in taking steps for termination of agreement within a reasonable time.

In identical circumstances this Court in ANDHRA PRADESH STATE ELECTRICITY BOARD v. M/s. KRISHIVALI KHANDASARI SUGAR INDUSTRY AND OTHERS ^[1], depreciated the action of the Board in collecting the minimum

charges without terminating the contract within a reasonable period.

Having regard to the undisputed facts, I am of the opinion that having kept the agreement alive from 15-10-1992 upto to 10-08-1996 without there being any valid reason, the respondents are not justified in demanding the minimum charges from the petitioners.

Accordingly, the impugned demand notice dated 10-11-1997 is set aside and the writ petition is disposed of with a direction to the respondents to reconsider the liability of the petitioner in the light of the observations made above and pass appropriate orders in accordance with law. It is open to the petitioner to submit its objections, if any, to the impugned demand within a period of four weeks from the date of receipt of a copy of this order. No order as to costs.

Justice G. ROHINI

Dated 14-03-2007.

Gbs/Dvs

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[1] AIR 1984 AP 360